

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Schools and Libraries Universal Service)	CC Docket No. 02-6
Support Mechanism)	
)	
)	

**COMMENTS OF SPECTRUM COMMUNICATIONS
CABLING SERVICES, INC.**

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Dated: April 5, 2002

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I. INTRODUCTION AND SUMMARY

Spectrum Communications Cabling Services, Inc. (“Spectrum”) submits these comments in response to the Notice of Proposed Rulemaking released by the Federal Communications Commission (“Commission”) in this proceeding on January 25, 2002.¹ Spectrum is a competitive provider of internal connections and related equipment and services to schools and libraries located in California. As a current participant in the Commission’s effort to connect the nation’s classrooms and libraries to the Internet, Spectrum strongly supports the Commission’s commencement of this rulemaking proceeding to improve the efficiency and fairness of the universal service support program. Spectrum’s comments are limited to three proposals outlined in the *Notice*.

First, the Commission’s proposal to establish an online list of eligible products and services could significantly limit the ability of applicants to obtain innovative

products and services if the list is an exclusive and exhaustive list. Instead, such an online list should serve as a “safe harbor” that complements the existing application and review process. In that way, the list of eligible products and services can simplify the application process for schools and libraries without preventing schools and libraries from applying for, and undermining the efforts of providers to offer, innovative services and equipment.

Second, the Commission should classify leased internal connection equipment, such as Wide Area Networks (WANs), provided with telecommunications and Internet access services as Priority Two, rather than Priority One, services. Internal connection equipment *leases* should be treated no differently than internal connection equipment *purchases* by participating schools and libraries. As the Commission has noted, Priority One services have a significantly higher likelihood of receiving funding under the existing rules. The current practice of treating bundled offerings of leased equipment and telecommunications and Internet access services as Priority One, and treating purchases of internal connection equipment as Priority Two, skews applicants’ lease-versus-buy decisions. This unwarranted distinction between leasing and buying also gives an unjustified competitive advantage to providers of telecommunications and Internet access services that bundle equipment with their offerings and impairs the ability of independent equipment providers to provide competitive products and services to schools and libraries.

Third, to advance the Commission’s goal of ensuring that funds are fairly and equitably distributed, Spectrum recommends that the Commission adopt a rule

¹ Schools and Libraries Universal Service Support Mechanism, *Notice of Proposed*

prospectively that restricts any school or library site that actually receives discounts on internal connections in the prior funding year from obtaining additional discounts in the next funding year.

II. IF THE ADMINISTRATOR ESTABLISHES AN ONLINE ELIGIBLE SERVICE LIST, IT SHOULD BE A SAFE HARBOR RATHER THAN AN EXCLUSIVE LIST.

Under the current application process, the Universal Service Administrative Company (the “Administrator”) identifies on its website categories of services that are eligible and ineligible for universal service discounts. The *Notice* suggests that applicants may benefit from the establishment of a computerized list accessible online from which applicants could select specific pre-approved products and services eligible for universal service funding (“online eligible services list”) to complete their FCC Form 471 applications.² The Commission seeks comment on the desirability and feasibility of an online eligible services list and how such a list could be updated and maintained so that it does not limit an applicant’s ability to apply for innovative products and services newly introduced to the marketplace.³

The *Notice* suggests that providing applicants with a specific list of pre-approved products and services could lessen the frequency of applicants seeking funding for ineligible services, simplify the application review process, and further the Commission’s goal of preventing fraud and abuse. Spectrum fully supports these goals. As the Commission recognized in its *Notice*, however, implementing an online list that

Rulemaking and Order, CC Docket No. 02-6, (rel. January 25, 2002) (“*Notice*”).

² *Notice* at para. 14.

³ *Id.*

pre-approves the *only* services and products that are eligible for universal service support could “inadvertently limit applicants’ ability to take advantage of products and services newly introduced to the marketplace.”⁴

Two modifications to the proposed online list could help to avoid this outcome. First, any online list of eligible products and services should be updated frequently to keep pace with innovations. Second, and more importantly, if the Commission is persuaded that the availability of an online list on balance would be helpful to applicants, Spectrum strongly recommends that the list serve as a “safe harbor,” rather than an exclusive or exhaustive list. The list should include products and services that are pre-approved, but should *not* limit applicants from seeking, or the Administrator from approving, funding for other not-yet-approved products and services. Such a safe harbor list would help to ensure that applicants would be able to apply for newly developed products and services. A non-exclusive safe harbor list would create less of a barrier to the development of innovative offerings by existing service providers and potential new entrants than would an exclusive list.

⁴ Notice at para. 14. Any implementation of an online list also should accommodate those schools and libraries that are interested in applying for universal service support discounts, but that lack computer access to the online list. In addition, an online list should be flexible and not constitute a barrier to entry to some service providers. For example, providers of eligible professional services typically tailor their services to meet the unique service and network requirements of individual schools and libraries. Too narrow a definition of the types of professional services that are eligible for discounts would preclude some applicants from obtaining discounts for their otherwise eligible requirements. Too broad a definition might create uncertainty among applicants attempting to determine whether a professional service is considered a Priority One or a Priority Two service.

III. THE PROVISION OF WAN-RELATED EQUIPMENT, WHETHER BY SALE OR LEASE, SHOULD BE CLASSIFIED AS A PRIORITY TWO SERVICE.

The Commission currently treats eligible leased WAN-related expenses as Priority One services rather than as Priority Two internal connections.⁵ In the *Notice*, the Commission seeks comment on whether this treatment has resulted in a fair and equitable distribution of universal service funds and, if not, what changes the Commission should make to its treatment of WAN-related expenses consistent with Section 254 of the Communications Act of 1934, as amended (the “Act”).⁶

Historically, the provision of WANs and WAN-related equipment was treated as a Priority Two service, consistent with the classification of other internal connections equipment. After the *Tennessee Order*, however, the Commission now permits such equipment to be classified as a Priority One service if it is leased and bundled with the provision of a telecommunications or Internet access service.⁷ Treating *leased* equipment or equipment bundled with transmission services as Priority One, while treating

⁵ See Request for Review of the Decision of the Universal Service Administrator by Brooklyn Public Library, Brooklyn, New York, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc., File No. SLD-149423, CC Dockets 96-45 and 97-21, *Order*, 15 FCC Rcd 18598 (2000); and Request for Review by the Department of Education of the State of Tennessee of the Decision of the Universal Service Administrator, Request for Review by Integrated Systems and Internet Solutions, Inc. of the Decision of the Universal Service Administrator, Request for Review by Education Networks of America of the Decision of the Universal Service Administrator, Federal-State Joint Board on Universal Service and Changes to the Board of Directors of the National Exchange Carrier Association, Inc., Application No. 18132, CC Dockets 96-45 and 97-21, *Order*, 14 FCC Rcd 13734 (1999) (“*Tennessee Order*”).

⁶ 47 U.S.C. § 254. *Notice* at para. 20.

⁷ See *Notice* at paras, 17, 18 and 20.

purchased equipment as Priority Two is not competitively neutral, since Priority One services have a significantly greater likelihood of receiving funding under the existing rules than do Priority Two services.⁸ This disparate treatment clearly places independent equipment providers at a substantial competitive disadvantage because applicants have a strong incentive to favor leased and bundled offerings over purchases of WAN-related equipment, even if purchasing otherwise would be a more economically efficient choice.

The Commission's current treatment of leased WAN equipment under its eligibility rules also could have broader adverse consequences. There does not appear to be any principled basis for limiting the application of the *Tennessee Order* to WANs and WAN-related equipment leases and not applying it to other packages of leased equipment and transmission services. Classifying additional bundles of leased equipment and transmission services as Priority One services would further skew lease-versus-buy decisions of applicants and, importantly, place a significant drain on universal service funds.

If additional bundles of equipment and services were also treated as Priority One services, the ability of independent equipment providers to compete with incumbent local exchange carriers and other carriers to provide internal connections and equipment to schools and libraries would be severely undermined. The Commission's universal service rules should promote opportunities for vendors to compete, so that schools and libraries, and the students and citizens they serve, benefit from the lower prices, higher service quality, and increased innovation that competition produces. Unreasonably

⁸ *Id.* at para. 20 (the Commission recognizing that leasing equipment as a Priority One service has a higher likelihood of being funded under the current priority rules than purchasing equipment as internal connections).

favoring leases or bundled offerings would disadvantage or exclude a significant group of existing and potential entrants from competing to serve the nation's schools and libraries.⁹ The Commission therefore should amend its current classification of leased WAN-related equipment and reject any proposal to give preferential treatment to leased equipment and bundles of equipment and transmission services over equipment purchases.

IV. THE COMMISSION SHOULD PERMIT APPLICANTS TO RECEIVE DISCOUNTS ON INTERNAL CONNECTIONS ONLY EVERY OTHER YEAR.

The *Notice* raises two concerns regarding the transfer and upgrade of equipment purchased with universal service funding.¹⁰ One concern is that some eligible recipients may transfer equipment purchased with universal service funds to other, ineligible, schools and libraries. A second concern is that eligible recipients may deplete funding by seeking additional discounts for internal connections and thereby frustrate the Commission's goal of ensuring that the limited available funds are fairly and equitably distributed. To address these concerns, the Commission seeks comment on whether to adopt a three-year restriction on the transfer of equipment other than cabling, and on a ten-year restriction on the transfer of cabling.¹¹ In addition, the Commission seeks

⁹ Another adverse consequence of classifying leases and bundled offerings as a Priority One service is that in some areas of the country only the local telephone company is capable of providing leased or bundled offerings. In such cases, schools and libraries do not benefit from lower prices arising from competitive bidding among service providers, which contributes to the more rapid depletion of available universal service support program funds.

¹⁰ *Notice* at paras. 37 and 38.

¹¹ *Id.* at para. 39.

comment on alternative proposals to (i) limit an applicant's cabling upgrades to ten percent of its existing cabling per year, or (ii) deny internal connections discounts for a certain period to any school or library that has already received such discounts.¹²

The Commission's proposal to limit equipment transfers for three years is well targeted to address the Commission's concern about the transfer of equipment to schools and libraries that were not eligible for discounts. Equipment, such as servers, can be moved and re-installed with relative ease. Cabling is not easily removable, however. Consequently, although the Commission may want to adopt transfer restrictions for equipment that is portable, a transfer restriction for cabling is unnecessary.

The *Notice* also seeks comment on whether to limit upgrades of equipment and cabling by schools and libraries.¹³ The purpose of such limitations is to increase the likelihood that a wider group of schools and libraries would obtain access to discounts for needed equipment and cabling. In Spectrum's view, the best alternative to advance this objective is to bar any entity that has already received internal connection discounts from obtaining additional discounts for internal connections for a specified future period. Specifically, the Commission should adopt, on a going forward basis, a one-year "blackout period" on internal connections discounts for entities that receive such discounts.¹⁴ The blackout period should apply only to school and library sites that

¹² *Id.* at para. 40. The Commission's proposed transfer and upgrade proposals are important to achieving equitable distribution of universal service support for internal connections, but of far greater significance is the need for the Commission to stem the drain of resources created by treating leased equipment and bundled offerings as Priority One services, as discussed above.

¹³ *Notice* at paras. 38-40.

¹⁴ In comments filed previously with the Commission, Spectrum joined a coalition of school districts, service providers, equipment suppliers, education associations and consultants (the "PEP Coalition") in urging the Commission to develop universal service

actually received discounts for internal connections, not to consortiums in which applicants may participate in requesting funding.¹⁵ Under this proposal, a school or library site actually receiving discounts for internal connections in one funding year would be barred from receiving such discounts in the next funding year. Once the one-year blackout period expires -- at the end of the next funding year -- the school or library could again be eligible to receive internal connections discounts for that site.

A one-year restriction is far simpler to administer than the Commission's alternative proposal to limit applicants to upgrading only ten percent of their "old cabling" per year.¹⁶ For example, a ten-percent rule would require valuations of the 'applicants' "old" cabling and determinations of whether the basis from which the ten percent was calculated had changed from one year to the next. A clear one-year restriction would allow the Administrator to avoid such valuations and provide greater certainty to applicants as well as vendors. Moreover, it would eliminate the need for the

funding priority rules that apply prospectively, rather than retroactively, to avoid any inequities or unintended results in the application of the rules to applicants who had previously filed funding applications. *See Comments of the Coalition for Predictable E-rate Priorities*, dated May 23, 2001, at 10, Federal-State Joint Board on Universal Service, CC Docket No. 96-45 ("*E-Rate Prioritization Rules Comments*"). If the Commission adopts new application filing restrictions for internal connections upgrades, those rules should apply prospectively only and should be adopted enough in advance to enable applicants to factor in the impact of the new rules when filing their next internal connections funding applications.

¹⁵ Spectrum also joined the PEP Coalition in recommending that the Commission's universal service funding rules not exclude individual schools and libraries that were part of a district-wide or statewide consortium but that did not receive any funding themselves. *See E-Rate Prioritization Rules Comments* at 10. Similarly, if the Commission adopts rules restricting the transfer and upgrade of equipment and cabling, such rules should apply only to applicant sites that actually received universal service support in a prior year and not to schools and libraries that are considered part of a district-wide or statewide consortium but that did not actually receive any funding themselves.

¹⁶ Notice at para. 39.

Administrator to (i) establish and maintain an administrative system for tracking over several years when internal connections equipment was funded and installed at a school or library site and (ii) engage in a large number of time-consuming factual inquiries necessary to determine whether a single piece of network equipment is eligible for upgrade using internal connections discounts. The one-year blackout period should apply regardless of whether an entity applied to upgrade its existing internal connections or to add new internal connections. Finally, a one-year blackout rule would further the goal of Section 254 of fair and equitable distribution of funding by permitting entities that have not received internal connection discounts in the prior funding year to have a greater opportunity to obtain such discounts in the next funding year.

V. CONCLUSION

For the reasons set forth above, the Commission should adopt the modifications to its Universal Service Fund procedures recommended herein.

Respectfully submitted,

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Dated: April 5, 2002

CERTIFICATE OF SERVICE

I, Denise Owusu, do hereby certify that on this 5th day of April, 2002, I caused a copy of the foregoing Comments of Spectrum Communications Cabling Services, Inc. to be served upon each of the parties listed below.

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